

8/29/05 (19)

DEED RIDER

***For Comprehensive Permit Projects in Which Funding is Provided
Through a Non-Governmental Entity***

annexed to and made part of that certain deed (the "Deed") from Franklin Place Partners LLC ("Grantor") to _____ ("Grantee") dated _____, 200_

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the attached Deed ("Property") to the Grantee at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was originally financed by a non-governmental entity for which the Massachusetts Housing Finance Agency served as project administrator pursuant to Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity (the "Guidelines") issued by the Department of Housing and Community Development ("DHCD"), and was granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20-23, from the Town of Acton (the "Municipality"); and

WHEREAS, pursuant to the Guidelines, eligible purchasers such as the Grantee are given the opportunity to purchase certain property at a discount of the property's fair market value if the purchaser agrees to certain use and transfer restrictions, including the agreement to occupy the Property as a principal residence and to convey the Property on resale to an income-eligible purchaser, or to the Municipality, for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, in order to make it most likely that an income-eligible purchaser who can afford to buy the Property can be located when the Grantee desires to sell, the maximum resale price is limited by the percentage change in median income, with a credit for certain capital improvements, as more fully provided herein; and

WHEREAS, Acton Board of Selectmen, or designee, (the Monitoring Agent") has been retained to monitor compliance with the terms of this Deed Rider, and eligible purchasers such as the Grantee are required to pay to the Monitoring Agent, or its successor, a small percentage of the resale price upon the purchaser's conveyance of the Property, as more fully provided herein.

NOW, THEREFORE, as further consideration for the conveyance of the Property at a discount in accordance with the Guidelines, the Grantee, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be

enforceable by, the Municipality and the Monitoring Agent (as herein defined).

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund shall have the meaning set forth in Section 7 of the Regulatory Agreement.

Approved Capital Improvements means the documented commercially reasonable cost of capital improvements made to the Property, provided that such cost is approved by the Monitoring Agent and further provided that such cost was not previously included in the calculation of the Maximum Resale Price for any prior sale of the Property.

Example: The documented commercially reasonable cost of a new roof paid for by the Grantor may be included in the Maximum Resale Price on the sale to the Grantee, but the documented commercially reasonable cost of a new septic system included in the Maximum Resale Price when the Grantor purchased the Property is not included in calculating the Maximum Resale Price to the Grantee.

Area means the Primary Metropolitan Statistical Area which includes the Municipality.

Base Income Number means the most recently published Area median income number (MFI) as determined by HUD.

Chief Elected Official means, with respect to a city, the Mayor of such city, and with respect to a town, the Board of Selectmen of such town.

Closing shall have the meaning set forth in Section 4(d) hereof.

Compliance Certificate shall have the meaning set forth in Section 4(j) hereof.

Comprehensive Permit means the comprehensive permit issued by the Zoning Board of Appeals of the Municipality with respect to the Project, recorded in the Registry in Book ___, Page ___.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Developer means the entity designated as the Developer in the Regulatory Agreement.

Eligible Purchaser means an individual(s) or household who qualifies as a First-Time Homebuyer (unless otherwise specified in the Guidelines) earning no more than eighty percent (80%) of the Base Income Number and, if applicable, owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time. If HUD discontinues publication of median income statistics, then the Monitoring Agent shall designate another measure of eligible income. To be considered an Eligible Purchaser, the individual(s) or household must intend to occupy and thereafter occupy the Property

as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income and, if applicable, assets as the Monitoring Agent may require to justify designation as an Eligible Purchaser.

Eligible Purchaser Certificate shall have the meaning set forth in Section 5(a) hereof.

First-Time Homebuyer means an individual(s) or household, none of whom have had an ownership interest in a principal residence at any time during the three (3)-year period prior to the purchase date of the Property.

HUD means the United States Department of Housing and Urban Development.

Initial Sales Price means the price at which the Property is first sold by the Developer to an Eligible Purchaser.

Maximum Resale Price means the sum of (A) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (B) the Resale Fee, plus (C) Approved Capital Improvements, if applicable.

Monitoring Agent means ACTON BOARD OF SELECTMEN or its designee, as monitoring agent under the Monitoring Services Agreement, or any successor monitoring agent selected in accordance with the provisions of Section 6 of the Monitoring Services Agreement. The Monitoring Agent may also include the Municipality under contract with ACTON BOARD OF SELECTMEN or its designee (or any other duly selected successor monitoring agent) and the Project Administrator to provide a portion of the services under the Monitoring Services Agreement.

Monitoring Services Agreement means the Monitoring Services Agreement of even date with the Regulatory Agreement among the Developer, the Monitoring Agent, the Municipality and the Project Administrator, in the form attached as Exhibit D to the Regulatory Agreement.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 6(b) hereof.

Municipal Compliance Certificate shall have the meaning set forth in Section 5(a) hereof.

Permitted Indebtedness shall have the meaning set forth in Section 6(a) hereof.

Permitted Mortgagee shall have the meaning set forth in Section 6(a) hereof.

Project means the 12-unit development located at 520 Main Street, Acton, MA, which, pursuant to the terms of the Comprehensive Permit and the Guidelines, includes 3 units of affordable housing for Eligible Purchasers.

Project Administrator means the Massachusetts Housing Finance Agency, acting on behalf of DHCD pursuant to the Guidelines.

Registry means the Middlesex South District Registry of Deeds.

Regulatory Agreement means the Regulatory Agreement among the Project Administrator, the Monitoring Agent, the Municipality and the Developer dated and recorded with the Registry in Book _____, Page _____.

Related Party shall have the meaning set forth in Section 6(a) hereof.

Resale Fee means two and one-half percent (2.5%) of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid to the Monitoring Agent as compensation for monitoring compliance with the terms of this Deed Rider, including the resale process, as more fully described in Section 11 hereof.

Resale Price Certificate means the certificate issued by the Project Administrator and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued by the Monitoring Agent in accordance with Section 3 of the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Grantee's sale of the Property, according to the terms of this Deed Rider, for so long as the restrictions set forth herein continue.

Resale Price Multiplier means **2.361**, which is the number set forth in the most recently recorded Resale Price Certificate. The original Resale Price Multiplier was calculated by the Project Administrator by dividing the Initial Sale Price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser, and unless a new Resale Price Certificate is recorded as provided below and in accordance with Section 3 of the Regulatory Agreement, this number will be multiplied by the Base Income Number at the time of resale by the Grantee to determine (in part) the Maximum Resale Price on such resale. In the event that the purchase price paid for the Property by the Grantee includes Approved Capital Improvements, the Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid (not including the Resale Fee) by the Base Income Number at the time of such purchase, and a new Resale Price Certificate will be recorded immediately following the recording of this Deed.

Example: Assume the Base Income Number at the time of the initial sale is \$80,800 and the Initial Sale Price is \$150,000. The Resale Price Multiplier would equal 1.86 ($150,000/80,800 = 1.86$). Then assume that at the time the initial purchaser sells the unit, the Base Income Number has increased to \$88,072 and the cost of Approved Capital Improvements (e.g., a new roof) equals \$5,000, the Maximum Resale Price (herein defined) would be calculated as follows: $\$88,072 \times 1.86 = \$163,814$ + the Resale Fee (herein defined) + \$5,000. If the subsequent purchaser sells the unit at a time when the Base Income Number is \$85,000, the Maximum Resale Price would be calculated as follows: (i) recalculated Resale Price Multiplier = 1.92 ($168,814/88,072 = 1.92$); (ii) $\$85,000 \times 1.92 = \$163,200$ + the Resale Fee + Approved Capital Improvements (if applicable).

Term means, unless terminated earlier according to Section 6 hereof, the period from the date hereof until the earliest to occur of (i) the termination of the term of affordability set forth in the Comprehensive Permit, (ii) the recording of a Compliance Certificate, (iii) the recording of an Eligible Purchaser Certificate and a new Deed Rider executed by the Eligible Purchaser referenced in the Eligible Purchaser Certificate, which new Deed Rider the Eligible Purchaser Certificate certifies is in form and substance satisfactory to the Monitoring Agent and the Municipality, or (iv) the conveyance of the Property to the Municipality and the recording of a Municipal Purchaser Certificate as set forth herein.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Grantee as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with the purpose of this Deed Rider is expressly prohibited.

3. Restrictions Against Leasing and Junior Encumbrances. The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided, however, that this provision shall not apply to a first mortgage granted in connection with this conveyance. Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Monitoring Agent shall be recoverable by the Monitoring Agent or the Municipality, together with all costs of collection, including attorneys fees, and shall be paid upon recovery and payment of costs to the Municipality for deposit to its Affordable Housing Fund.

4. Provisions of Resale. (a) When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Municipality and the Monitoring Agent in writing of the Grantee's intention to so convey the Property (the "Conveyance Notice"). The Conveyance Notice shall set forth the Resale Price Multiplier and the Maximum Resale Price of the Property. Upon receipt of the Conveyance Notice, the Monitoring Agent shall promptly begin locating an Eligible Purchaser. The Grantee shall fully cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser and will be required to hire a broker to assist the Monitoring Agent in locating an Eligible Purchaser, if so requested by the Monitoring Agent. The Eligible Purchaser located by the Monitoring Agent shall purchase the Property at the Maximum Resale Price within ninety (90) days after the Monitoring Agent receives the Conveyance Notice, or such further time as reasonably requested to arrange for details of closing. The Municipality shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice, or such further time as reasonably requested to arrange for details of closing. Any lack of cooperation by Grantee in resale efforts shall extend this period for the length of the delay caused by such lack of cooperation, not to exceed an additional ninety (90) days.

(b) The Monitoring Agent shall devote diligent marketing efforts to locate an

Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above. If more than one Eligible Purchaser is located through diligent marketing efforts of the Monitoring Agent, it shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to the conveyance of the Property. The procedure for locating and selecting an Eligible Purchaser shall be approved as provided in the Regulatory Agreement.

(c) If an Eligible Purchaser is selected to purchase the Property, or if the Municipality elects to purchase the Property, the Property shall be conveyed by the Grantee to such Eligible Purchaser or to the Municipality as the case may be, by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Grantor to Grantee, (v) such additional easements, restrictions, covenants and agreements of record as the Eligible Purchaser or the Municipality, as applicable, consents to, such consent not to be unreasonably withheld or delayed, and (vi) a Deed Rider satisfactory in form and substance to the Monitoring Agent which the Grantee hereby agrees to annex to said deed.

(d) Said deed shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property), exercised by written notice to the Grantee at least five (5) days prior to the delivery of the deed, at such other place as the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the Eligible Purchaser (or the Municipality if the Municipality is purchasing the Property) to the Grantee, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in subsection (a) above.

(e) To enable Grantee to make conveyance as herein provided, Grantee may, if so desired at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Grantee's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the Eligible Purchaser or the Municipality to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the Municipality's rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the Municipality's rights herein.

(f) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Eligible Purchaser or by the Municipality.

(g) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date hereof, reasonable wear and tear only excepted.

(h) If Grantee shall be unable to give title or to make conveyance as above stipulated, or if any change of condition in the Property not included in the above exception shall occur, then Grantee shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition hereby provided for. The Grantee shall use best efforts to remove any such defects in the title whether voluntary or involuntary and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Grantee that such defect has been cured or that the Property has been so restored. The Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) shall have the election, at either the original or any extended time for performance, to accept such title as the Grantee can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Grantee shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Grantee shall, unless the Grantee has previously restored the Property to its former condition, either:

(A) pay over or assign to the Eligible Purchaser or the Municipality, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonable expended by the Grantee for the partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the Eligible Purchaser or to the Municipality a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Grantee for any partial restoration.

(i) If the Monitoring Agent is successful in locating an Eligible Purchaser within ninety (90) days after receipt of the Conveyance Notice, but the Eligible Purchaser is unable to secure mortgage financing so as to be able to complete the purchase of the Property, the Monitoring Agent will have an additional sixty (60) days from the date of written notification from the first Eligible Purchaser that he/she/they are unable to

complete the purchase, to find another Eligible Purchaser to purchase the Property.

(j) If the Monitoring Agent fails to locate an Eligible Purchaser who purchases the Property within ninety (90) days (with any requested additional time for closing details) after receipt of the Conveyance Notice (or within the sixty (60)-day period allowed under the previous subsection), and the Municipality does not purchase the Property during said period, then, subject to the provisions of subsection (l) of this Section 4, no later than six (6) months following expiration of such period, the Grantee may convey the Property to any third party at no less than fair market value free and clear of all rights and restrictions contained herein, including, but not limited to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality for deposit to its Affordable Housing Fund. Upon receipt of this excess amount, the Municipality shall issue to the third party and to the Monitoring Agent a certificate (the "Compliance Certificate") in recordable form reflecting the Municipality's receipt of the excess amount, if any, that all rights, restrictions, agreements and covenants contained herein are henceforth null and void and that the sale of the Property to the third party is consistent with the terms of this Deed Rider. This Compliance Certificate is to be recorded in the Registry. This Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to the Monitoring Agent's prior approval, giving due consideration to such factors as the appraised value of the Property, time on the market, marketing efforts and economic conditions.

(k) The Grantee understands and agrees that nothing in this Deed Rider or the Regulatory Agreement in any way constitutes a promise or guarantee by the Project Administrator, the Municipality or the Monitoring Agent that the Grantee shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

(l) In the event that the Closing of the sale of the Property to an Eligible Purchaser or the Municipality does not occur within one hundred twenty (120) days of the date the Monitoring Agent receives the Conveyance Notice (plus the additional sixty (60) days allowed under subsection (i) of this Section 4), the Grantee shall have the following six (6) months to sell the Property at a price greater than or equal to 95% of its appraised value (determined by an appraiser acceptable to the Monitoring Agent). If the Property is not sold at such a price within such six (6)-month period, and only if the Base Income Number has been reduced within such time, at the end of such six (6)-month period the Monitoring Agent shall have a new ninety (90)-day period to locate an Eligible Purchaser to purchase the Property, at the reduced Maximum Resale Price calculated on the basis of the reduced Base Income Number..

5. Resale and Transfer Restrictions. (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Grantee, the

Grantee's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the Eligible Purchaser (as located and defined in accordance with Section 4 above) or the Municipality, to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and (i) if the Property is conveyed to an Eligible Purchaser, unless a certificate (the "Eligible Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent which Eligible Purchaser Certificate refers to the Property, the Grantee, the Eligible Purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the Eligible Purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the Eligible Purchaser, which new Deed Rider is substantially in the same form as this Deed Rider; or (ii) if the Property is conveyed to the Municipality unless a Certificate (the "Municipal Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent, which Municipal Purchaser Certificate refers to the Property, the Grantee, the Municipality, and the Maximum Resale Price for the Property and states that the proposed conveyance, sale or transfer of the Property to the Municipality is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the Municipality, which new Deed Rider is substantially in the same form as this Deed Rider; or (iii) pursuant to Section 4(j), any amount in excess of the Maximum Resale Price which is paid to the Grantee by a purchaser who is permitted to buy the Property pursuant to Section 4(j), is paid by the Grantee to the Municipality, and the Municipality executes and delivers a Compliance Certificate as described in Section 4(j) for recording with the Registry.

(b) Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate, an Eligible Purchaser Certificate or a Municipal Purchaser Certificate referring to the Property as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Property, provided, in the case of an Eligible Purchaser Certificate and a Municipal Purchaser Certificate the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Eligible Purchaser Certificate or the Municipal Purchaser Certificate as the case may be.

(c) Within ten (10) days of the closing of the conveyance of the Property from Grantor to Grantee, the Grantee shall deliver to the Monitoring Agent a copy of the Deed of the Property, together with recording information. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

6. Rights of Mortgagees. (a) Notwithstanding anything herein to the

contrary, but subject to the next succeeding paragraph hereof, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns (other than the Grantee or any person related to the Grantee by blood, adoption, or marriage (any of the foregoing, a "Related Party")) shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, provided that the holder of such mortgage has given the Monitoring Agent and the Municipality not less than sixty (60) days prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure, and provided further that the principal amount secured by such mortgage did not exceed one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage (the "Permitted Indebtedness"), then the rights and restrictions contained herein shall not apply to such holder upon such acquisition of the Property, any purchaser (other than a Related Party) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than a Related Party) of the Property from such holder, and such Property shall thereupon and thereafter be free from all such rights and restrictions. The holder of Permitted Indebtedness is referred to herein as a "Permitted Mortgagee."

(b) In the event such Permitted Mortgagee conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the greater of (i) the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the Permitted Mortgagee is entitled to recover pursuant to the terms of the mortgage (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price, such excess shall be paid to the Municipality for its Affordable Housing Fund in consideration of the loss of the Property as affordable housing after a final judicial determination that the Municipality is entitled to such excess, the costs of such determination to be deducted from the excess prior to payment to the Municipality. To the extent the Grantee possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to the Municipality.

(c) A Permitted Mortgagee shall notify the Monitoring Agent and the Municipality in the event of any default for which the Permitted Mortgagee intends to commence foreclosure proceedings, which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Deed Rider. No failure to notify the Monitoring Agent and the Municipality pursuant to the previous sentence shall impair the validity of a foreclosure.

(d) The Grantee grants to the Municipality the right and option to purchase the Property upon receipt by the Municipality of notice in any form (including notice by newspaper publication deemed to be received on the date of publication) of an impending foreclosure against the Property. In the event the Municipality intends to exercise its

option, the Municipality shall purchase the Property at a price equal to the greater of the Maximum Resale Price or the Mortgage Satisfaction Amount within sixty (60) days of receipt of such notice. The deed to the Municipality shall include a deed rider containing all of the rights and restrictions set forth in this Deed Rider and otherwise satisfactory in form and substance to the Monitoring Agent which the Municipality, as a condition to such purchase, agrees to annex to said deed. Any excess received by the Permitted Mortgagee over the Mortgage Satisfaction Amount shall be paid to the Grantee (provided, that in the event that such excess shall be so paid to the Grantee, the Grantee shall thereafter indemnify such Permitted Mortgagee against loss or damage to such Permitted Mortgagee resulting from any claim made by any other party to the extent that such claim is based upon payment of such excess by such Permitted Mortgagee to the Grantee in accordance herewith, provided that such Permitted Mortgagee shall give the Grantee prompt notice of any such claim and shall not object to intervention by the Grantee in any proceeding relating thereto). .

(e) If any person who was a Related Party prior to any foreclosure acquires an interest in the Property within ten (10) years after foreclosure, then all covenants and options contained herein shall apply to all subsequent occupancy and sale of the Property.

(f) A certificate signed by the Monitoring Agent and, under penalties of perjury, by a purchaser at a foreclosure sale (or any subsequent purchaser) certifying that such purchaser is not a Related Party shall, if recorded with the Registry, be conclusive evidence that such purchaser is not a Related Party.

7. Covenants to Run With the Property. (a) It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth herein shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Municipality and the Monitoring Agent, their successors and assigns, during the Term of this Deed Rider.

(b) This Deed Rider and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws.

(c) The Grantee intends, declares and covenants on behalf of Grantee and Grantee's successors and assigns (i) that this Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, and Grantee's successors and assigns and enure to the benefit of the Municipality and the Monitoring Agent, and their successors and assigns, for the Term. Grantee hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the Grantor, the Municipality, and the Monitoring Agent, their successors and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Municipality, and the Monitoring Agent, their successors and assigns, by an action to enforce such rights, restrictions, covenants, and agreements.

8. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Town of Acton
472 Main Street
Acton, MA 01720
Attn: Board of Selectmen

Grantor:

Franklin Place Partners LLC
178 Great Road
Acton, MA 01720

Grantee:

Monitoring Agent:

Acton Board of Selectmen, or designee,
472 Main Street
Acton, Massachusetts 01720

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

9. Further Assurances. The Grantee agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent with a written statement, signed and, if requested, acknowledged, setting forth the condition and

occupancy of the Property, information concerning the resale of the Property and all other material information pertaining to the Property or the Grantee's conformance with the requirements of the Comprehensive Permit and the Guidelines.

10. Enforcement. (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief against any violations including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Municipality and the Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the Municipality shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

(i) specific performance of the provisions of this Deed Rider;

(ii) money damages for charges in excess of the Maximum Resale Price, if applicable;

(iii) if the violation is a sale of the Property at a price greater than the Maximum Resale Price as provided herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser or purchase the Property on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Deed Rider;

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Certificate of Compliance, by an action in equity to enforce this Deed Rider; and

(v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, in the event of a violation of the provisions of this Deed Rider, the Monitoring Agent and the Municipality may take appropriate enforcement action against the Grantee or the Grantee's successors in title, including, without limitation, legal action to compel the Grantee to comply with the requirements of this Deed Rider. The Grantee hereby agrees to pay all fees and expenses (including legal fees) of the Monitoring Agent and/or the Municipality in the event successful enforcement action is taken against the Grantee hereunder. The Grantee hereby grants to the Monitoring Agent and the Municipality a lien on the Property, junior to the lien of

any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent and the Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Grantee and to assert such a lien on the Property to secure payment by the Grantee of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent and/or Municipality fails to enforce this Deed Rider as provided in this Section, the Department of Housing and Community and Development, its successors and assigns, shall have the same right to enforce this Deed Rider as provided herein.

(d) The Grantee for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Monitoring Agent the right to enter upon the Property for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Property which the Monitoring Agent may determine to be necessary or appropriate pursuant to court order, or with the consent of the Grantee to prevent, remedy or abate any violation of this Deed Rider.

11. Monitoring Agent Services; Fees. The Monitoring Agent has been engaged to monitor compliance of the Project with ongoing requirements of the Comprehensive Permit and this Deed Rider, including the requirement that the Property be sold and resold to Eligible Purchasers (or to the Municipality) as provided therein. As partial compensation for providing these services, the Monitoring Agent shall receive the Resale Fee on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Deed Rider . This fee shall be paid by the Grantee as a closing cost at the time of Closing, and payment of the fee of the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser and persons claiming under the new purchaser for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

12. Severability. If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

Executed as a sealed instrument this ____ day of _____, 200 .

Grantor:

Grantee:

By _____

By _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, , proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, , proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

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Print Name:
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